RECORD AND BRIEFS

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IN THE

Supreme Court of the United States

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*,
Respondents.

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,

v.

HAWAII, *et al.*,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals For the Fourth and Ninth Circuits

BRIEF *AMICUS CURIAE* OF THE NATIONAL EDUCATION ASSOCIATION, IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

This brief addresses the second question accepted for review by the Court:

> Whether Executive Order No. 13,780's temporary suspension of entry of those from six Muslim-majority countries violates the Establishment Clause.

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INTEREST OF AMICUS CURIAE

This *amicus curiae* brief is submitted, with consent of the parties,[1] on behalf of the National Education Association ("NEA"). NEA is the nation's largest professional association of educators representing approximately three million members, the vast majority of whom serve as educators, counselors, and education support professionals in our nation's public schools.

NEA has long supported equal educational opportunity for all students in our nation's public schools. NEA members work every day in their classrooms and schools to ensure that every student, no matter their race, religion, or national origin, receives a quality education that will allow them to grow into productive members of our democratic society. The provision of a quality education depends on many factors, but most fundamentally on ensuring that every student is treated equally and with respect. For that reason, the NEA's highest governing body has affirmed its unequivocal belief that "discrimination and stereotyping based on . . . religion must be eliminated . . . in all educational settings." NEA Resolution B-14 ("Racism, Sexism, Sexual Orientation, and Gender Identification Discrimination"), https://www.nea.org/assets/docs/Resolutions_2017_NEA_Handbook.pdf.

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[1] Letters of consent are on file with the Clerk. *Amicus* states that no party's counsel authored the brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than *Amicus*, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

Educators put that belief into practice every day. They work assiduously to "[i]ncrease respect, understanding, acceptance, and sensitivity" among all of their students, including the many Muslim children in our country's schools. *See id.* at B-14(a).

The atmosphere created by Executive Order No. 13,780 gives oxygen to the fires of bias, bullying, and discord. Presidential statements derogating members of the Muslim faith are mimicked by young, impressionable students. Peers turn on peers. Educators are working to re-affirm an educational environment that is "free of all forms of bullying including . . . psychological bullying" in recognition that "bullying can affect the entire school community." *Id.* at I-30 ("Bullying"). The interests at stake here—respect and fairness for our Muslim students, co-workers, friends, and neighbors—are core to NEA's mission.

INTRODUCTION AND SUMMARY OF ARGUMENT

Executive Order No. 13,780 violates the Constitution's Establishment Clause by disfavoring a religious group. The anti-Muslim animus behind the Executive Order is evidenced by the extensive record of President Trump's derogatory statements about Muslims and his stated intent to ban immigration based on religion. The Executive Order is the "Muslim ban" the President promised. The Respondents have persuasively explained why the Executive Order should be struck down. *Amicus* writes separately to inform the Court of the impact of President Trump's discriminatory rhetoric on the 1.3 million Muslim children in schools across the country. If the Executive

Order is upheld, the stigma this vulnerable population already has suffered due to anti-Muslim sentiment may become indelible.

As an organization that represents millions of educators, *Amicus* recognizes first-hand the impact that the words and actions of adults have on children. These models for behavior come from many sources—principals, parents, public figures—but one can scarcely conjure a more powerful and pervasive voice than that of the U.S. President, whose sayings and actions are part of U.S. history and so are studied by schoolchildren. "The White House," said President Theodore Roosevelt, "is a bully pulpit." Edward S. Corwin, *The President: Office and Powers* 267 (3d ed., 1948). President Franklin Roosevelt noted that the Presidency "is not merely an administrative office. That is the least part of it. It is pre-eminently a place of moral leadership." *Roosevelt on the Presidency*, N.Y. Times, Nov. 13, 1932. Whether issued from the Oval Office or Twitter, the statements of President Trump make a strong impression on children. And his anti-Muslim vitriol, repeatedly stated and widely reported, teaches a damaging lesson to America's children. Namely, harassment and discrimination against Muslims is not only acceptable, it is encouraged by the most powerful person in the country, their President.

This has real world implications, as evidenced by the striking increase in hate crimes against Muslims since the beginning of the presidential election season. Sadly, schools have not been immune to this increase in discrimination and hatred. Muslim students are far more likely to suffer bullying and dis-

crimination in schools than other students. This harassment and discrimination not only harms targeted students profoundly, it degrades the educational environment for all students. When discrimination against Muslims is perpetuated and sanctioned by the government, Muslim students are stigmatized and receive a strong message that they are not entitled to equal respect. Accordingly, *Amicus* urges this Court to strike down the Executive Order that would cement such religious discrimination as a violation of the Establishment Clause.[2]

I. The Court has recognized the powerfully damaging stigma imposed on children by unconstitutional religious preference.

A core tenet of the First Amendment, one made clear by the Court time and again, is that government "may not be hostile to any religion." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). This prohibition is "the clearest command of the Establishment Clause." *Larson v. Valente*, 456 U.S. 228, 244 (1982). And when religious preference or discrimination is nonetheless endorsed by the government, it is nowhere felt more acutely than in the schoolhouse by children. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 592 (1992) ("there are heightened concerns with protect-

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[2] To provide the Court with an understanding of the extent to which anti-Muslim rhetoric and actions have tainted our public schools, *Amicus* has interviewed public school educators throughout the country. The educators interviewed include high school, middle school, and elementary school teachers, as well as school counselors, who work in a variety of environments—from suburban to rural to urban.

ing freedom of conscience from subtle coercive pressure in the elementary and secondary public schools").

We need look no further than *Brown v. Board of Education* for this foundational understanding:

> "To separate [black students] solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Brown v. Bd. of Educ. of Topeka, Shawnee Cty., Kan., 347 U.S. 483, 494 (1954). A discriminatory policy harms students not just immediately but by the powerful, lasting, and damaging message it sends students as to their worth and value in society.

Muslims have been singled out in negative statements by the President and targeted by a punitive Executive Order. Many Muslim students will understandably take the President's statements and his actions to mean their country and community view them as inferior. The resulting psychosocial damage of such discriminatory stigmatization, as the Court in *Brown* observes, may never be completely undone.

The Court again recognized the stigmatizing message communicated by state-endorsed discrimination, and the particular respect in which children are uniquely vulnerable, when considering the Defense of Marriage Act:

> "DOMA undermines both the public and private significance of state-sanctioned same-sex marriag-

> es; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition. This places same-sex couples in an unstable position of being in a second-tier marriage."

United States v. Windsor, 133 S. Ct. 2675, 2694 (2013). This message of unworthiness "humiliates tens of thousands of children now being raised by same-sex couples" and makes it "difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Id.* Separated out for different treatment, children raised by same-sex couples "suffer the stigma of knowing their families are somehow lesser." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015). Federal policies effectuating discrimination "harm and humiliate" children associated with the targeted group. *Id.* at 2601.

After Donald Trump announced his candidacy for President in June 2015, he made numerous disparaging comments about Muslims. This continued throughout his campaign and into his presidency. *See Amicus Curiae Brief of the Roderick and Solange MacArthur Justice Center* at 6-26. The 1.3 million Muslim children[3] in the United States have

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[3] *U.S. Muslims Concerned About Their Place in Society, But Continue to Believe in the American Dream*, Pew Research Center (Jul. 26, 2017), http://www.pewforum.org/2017/07/26/demographic-portrait-of-muslim-americans/#how-many-muslims-are-there-in-the-united-states-and-how-do-we-know (reporting demographic estimate of the number of U.S. Muslims, including the number of children, based on survey data).

heard President Trump refer to them as a "problem,"[4] group them as terrorists,[5] and describe them as filled with "tremendous hatred."[6] Repeatedly, they have been exposed to public statements by President Trump that Muslims like themselves should be registered in a government database[7] and that no

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[4] Donald J. Trump (@realDonaldTrump), Twitter (Dec.10, 2015, 4:49 AM), https://twitter.com/realDonaldTrump/status/674934005725331456; Donald J. Trump (@realDonaldTrump), Twitter (Dec. 10, 2015, 5:00 AM), https://twitter.com/realDonaldTrump/status/674936832010887168; Donald J. Trump (@realDonaldTrump), Twitter (Dec. 10, 2015, 5:21 PM), https://twitter.com/realDonaldTrump/status/675123192864899072; CNN, *Donald Trump Anderson Cooper Interview Q&A 2/4/16*, YouTube (Feb. 4, 2016), https://www.youtube.com/watch?v=uW9UlMqJtro (minutes 18:42 to 18:46).

[5] *Id.*

[6] Theodore Schleifer, *Donald Trump: 'I Think Islam Hates Us'*, CNN (Mar. 10, 2016, 5:56 PM), http://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/; *Transcript of Republican Debate in Miami, Full Text*, CNN (Mar. 15, 2016, 3:11 PM), http://www.cnn.com/2016/03/10/politics/republican-debate-transcript-full-text/.

[7] Hunter Walker, *Donald Trump Has Big Plans for 'Radical Islamic' Terrorists, 2016 and 'That Communist' Bernie Sanders*, Yahoo News (Nov. 19, 2015), https://www.yahoo.com/news/donald-trump-has-big-plans-1303117537878070.html; Vaughn Hillyard, *Donald Trump's Plan for a Muslim Database Draws Comparison to Nazi Germany*, NBC News (Nov. 20, 2015, 9:27 AM), http://www.nbcnews.com/politics/2016-election/trump-says-he-would-certainly-implement-muslim-database-n466716; ABC 33/40, *Donald Trump in Birmingham: Full Speech at the BJCC* (Nov. 21, 2015), https://www.youtube.com/watch?v=IgvPoFo1zPY (minutes 43:11 to 43:32); Jim Otte, *Donald Trump in Ohio: U.S. Has Become 'Soft, Weak,'* Dayton Daily News (Nov. 23, 2015, 10:25 PM),

one sharing their religion should be allowed into the country.[8] A week into the Presidency, following this barrage of anti-Muslim statements, the first version of the Executive Order issued. Executive Order No. 13,769 (revoked and replaced by challenged Executive Order No. 13,780 on March 6, 2017). In an obvious reference to his campaign promise of a "Muslim ban," the President stated "we all know what [the Executive Order] means." *Trump Signs Executive Orders at Pentagon*, ABC News (Jan. 27, 2017), http://abcnews.go.com/Politics/video/trump-signs-executive-orders-pentagon-45099173. The challenged Executive Order, now in its second iteration, taken together with its predecessor and the barrage

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http://www.daytondailynews.com/news/national-govt-politics/donald-trump-ohio-has-become-soft-weak/5ZOBQutE4XSjTxV2NjvFnJ/.

[8] *Donald J. Trump Statement on Preventing Muslim Immigration*, Trump-Pence (Dec. 7, 2015), https://web.archive.org/web/20170301013409/https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration (Internet Archive record on Mar. 1, 2017); Donald J. Trump (@realDonaldTrump), Twitter (Dec. 7, 2015, 2:32 PM), https://twitter.com/realDonaldTrump/status/673993417429524480; Jenna Johnson, *Trump Calls for 'Total and Complete Shutdown of Muslims Entering the United States,'* Wash. Post (Dec. 7, 2015, 7:43 PM), https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/; MSNBC, *Donald Trump on Muslim Travel Ban, Obama And 2016*, YouTube (Dec. 8, 2015), https://www.youtube.com/watch?v=5I3E3-U-1jc (minutes 14:58 to 15:14); *Transcripts: Exclusive Interview with Donald Trump*, Anderson Cooper 360 Degrees (Mar. 9, 2016, 8:00 PM), http://www.cnn.com/TRANSCRIPTS/1603/09/acd.01.html.

of hateful statements by President Trump, is inevitably seen by students as government-endorsed religious discrimination against Muslims. As such, it harms and humiliates Muslim children by telling all the world they are unworthy. Should the Court uphold the Executive Order, it will affect students' hearts and minds in a way unlikely ever to be undone.

II. Bias-based harassment and discrimination against children who are Muslim or perceived to be Muslim has significant negative consequences.

a. Since the presidential election campaign began, hate crimes and discrimination against Muslims, including children, have surged.

Since Donald Trump announced his candidacy for President in June 2015, our nation has seen a dramatic rise in hate crimes against Muslims. The FBI reported that hate crimes against Muslims increased by 67% from 2014 to 2015.[9] Since the beginning of 2015, hate crimes against Muslims are at the highest level since the aftermath of September 11, 2001. Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, N.Y. Times (Sept. 17, 2016), https://www.nytimes.com/2016/09/18/us/politics/hate-crimes-american-

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[9] *See* FBI 2015 Hate Crime Statistics, https://ucr.fbi.gov/hate-crime/2015; Mazin Sidahmed, *FBI Reports Hate Crimes Against Muslims Surged 67% in 2015*, The Guardian (Nov. 14, 2016), https://www.theguardian.com/us-news/2016/nov/14/fbi-anti-muslim-hate-crimes-rise-2015.

muslims-rise.html?mcubz=1 (stating that hate crimes against American Muslims were up 78% over 2015 and that attacks on those perceived as Arab increased even more dramatically). In the five days immediately following then-candidate Trump's call for a shutdown of Muslims entering the United States, the frequency of anti-Muslim hate crime increased 87.5% compared to the previous five days, and included multiple assaults and two fire bombings. *See Special Status Report: Hate Crime in the United States*, Center for the Study of Hate & Extremism, California State University, San Bernardino (2016), at 15-19, 26-33, https://csbs.csusb.edu/sites/csusb_csbs/files/SPECIAL%20STATUS%20REPORT%20Final%20Draft.pdf.

The Executive Order challenged here, which President Trump himself has described as the "watered down, politically correct version" of the initial Executive Order,[10] has done nothing to abate this crisis. Arson, vandalism, and threats have been directed at an average of nine mosques each month in 2017. Nancy Coleman, *On Average, 9 Mosques Have Been Targeted Every Month This Year*, CNN (Aug. 7, 2017, 3:38 PM), https://amp.cnn.com/cnn/2017/03/20/us/mosques-targeted-2017-trnd/index.html.

These numbers do not reflect the many incidents targeting those perceived to be Muslims, such as

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[10] Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:29 AM), https://twitter.com/realdonaldtrump/status/871675245043888128.

Sikhs,[11] non-Muslim South Asians,[12] Middle Easterners,[13] and others, whose harassment is driven by anti-Muslim animus even though the harasser has inadvertently targeted the wrong individuals. *See* Nagwa Ibrahim, *The Origins of Muslim Racialization in U.S. Law*, 7 UCLA J. Islamic & Near E. L. 121, 144 (2008).

Unfortunately, the schoolhouse walls do not shield Muslim children, or those perceived to be Muslim, from hate crimes and discrimination. Overall, Muslim students report bullying four times more than other students. *See* Dalia Mogahed & Youssef Chouhoud, *American Muslim Poll 2017: Muslims at the Crossroads*, Institute for Social Policy and Understanding at 4, 12 (2017), https://www.ispu.org/wp-content/uploads/2017/06/AMP-2017_Full-Report.pdf. A 2015 survey of California Muslim students found that 55% were subject to some type of bullying based on religious identity. *Misla-*

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[11] Artemis Moshtaghian, Huizhong Wu & Susannah Cullinane, *Sikh Man's Shooting in Wash. Investigated as Hate Crime*, CNN (Mar. 6, 2017, 8:18 AM), http://www.cnn.com/2017/03/05/us/washington-sikh-shooting/index.html.

[12] Sangay K. Mishra, *An Indian Immigrant is Murdered in Kansas. It's Part of a Spike in Hate Crimes Against South Asians*, Wash. Post (Mar. 7, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/03/07/the-kansas-murder-of-an-indian-immigrant-is-part-of-a-spike-in-hate-crimes-against-south-asians/?utm_term=.5dc522e4e6d6.

[13] Kelly Weill, *'Get Out of America': Middle Eastern Restaurant Attacked in Potential Hate Crime*, The Daily Beast (Mar. 12, 2017, 8:00 PM), http://www.thedailybeast.com/get-out-of-america-middle-eastern-restaurant-attacked-in-potential-hate-crime.

beled: The Impact of School Bullying and Discrimination on California Muslim Students, Council on American-Islamic Relations California at 4 (2015), https://ca.cair.com/sfba/wp-content/uploads/2015/10/CAIR-CA-2015-Bullying-Report-Web.pdf. Another study found that 70% of American Muslim youth have experienced negative reactions due to their religious beliefs and practices. Sameera Ahmed, *Adolescents and Emerging Adults, in Counseling Muslims: Handbook of Mental Health Issues and Interventions* 251, 274 (Sameera Ahmed and Mona M. Amer eds., 2012). And in 2016, the Council on American-Islamic Relations recorded 209 incidents of anti-Muslim bias targeting students. *The Empowerment of Hate: 2017 Civil Rights Report*, Council on American-Islamic Relations at 23 (2017), http://islamophobia.org/images/2017CivilRightsReport/2017-Empowerment-of-Fear-Final.pdf. A Muslim educator interviewed for this brief noted that all three of her own children had been bullied in school for being Muslim.

While Muslim students already bore the brunt of higher levels of discrimination and bullying than other students, things have worsened significantly since President Trump's campaign and election. Educators across the country have reported on this "Trump effect" in their schools, which has included the harassment and bullying of Muslim students as well as an increase in discriminatory anti-Muslim views. One high school teacher interviewed for this brief regularly conducts an anonymous classroom exercise on stereotypes. She relayed that prior to the election, no anti-Muslim stereotypes had ever been identified by her students. However, this past year,

there were multiple comments submitted, including stereotypes that Muslims are terrorists, they are not to be trusted, and they may be disloyal to the U.S.

In a November 2016 survey of 10,000 educators, eighty percent reported increased levels of anxiety by marginalized students, including Muslims. *The Trump Effect: The Impact of the 2016 Presidential Election on Our Nation's Schools*, Southern Poverty Law Center (Nov. 28, 2016), https://www.splcenter.org/20161128/trump-effect-impact-2016-presidential-election-our-nations-schools. An interviewed educator echoed this finding, speaking of the fear and nervousness of an Arab-American student around the election and noting that children were frightened by the climate of intolerance. Multiple interviewed educators reported a noticeable uptick in hateful language and discriminatory comments among students. An April 2017 survey supports this observation, finding that half of teachers said that bullying related to politics had increased and thirty percent specifically noting increased bullying based on race and ethnicity or immigration and language. Madeline Will, *Survey: Teachers Talk Politics to Students, Despite Divisive Atmosphere*, Education Week (April 4, 2017), http://www.edweek.org/ew/articles/2017/04/05/survey-national-politics-causing-classroom-divisions.html?print=1.

Incidents abound of Muslim and Middle Eastern students being called ISIS, terrorists, or having hijabs (religious head coverings) pulled off by other students during the 2016 election season and beyond. *See, e.g.*, Kristina Rizga, *The Chilling Rise of Islamophobia in Our Schools*, Mother Jones (Jan. 26, 2016, 11:00 AM),

http://www.motherjones.com/politics/2016/01/bullying-islamophobia-in-american-schools/. Interviewed educators reported that female students wearing hijabs have been bullied at school since the start of the election. One educator stated that after the first iteration of this Executive Order was announced in January 2017, there were multiple incidents of students ripping hijabs off the heads of female Muslim students at her school. In a significant number of anti-Muslim incidents around the country, students have specifically invoked President Trump's name or his message to bully a classmate. Albert Samaha, Mike Hayes & Talal Ansari, *The Kids are Alt-Right*, BuzzFeed News (June 6, 2017, 11:55 AM), https://www.buzzfeed.com/albertsamaha/kids-are-quoting-trump-to-bully-their-classmates?utm_term=.jqpP84w7G#.tc2QDk4qy (substantiating reports submitted to a ProPublica database tracking hate crimes and bias incidents). And educators interviewed for this brief stated that students who are not assumed to be Muslim based on their appearance, such as Bosnians, are now afraid to identify as Muslim or be open about their religious identity.

b. Bullying, harassment, and discrimination cause significant negative harm to the victims.

Students who face discrimination and are bullied because of their actual or perceived Muslim identity suffer significant negative effects. In general, children who are bullied suffer from negative health consequences and decreased academic achievement. *See Effects of Bullying*, U.S. Dep't. of Health & Human Services, https://www.stopbullying.gov/

at-risk/effects/index.html. The negative health impacts of bullying include depression, anxiety, changes in sleep and eating patterns, and increased feelings of sadness and loneliness.[14] Children who have been bullied are also at higher risk for problems like colds, headaches, and are more likely to take up smoking. Dieter Wolke & Suzet Tanya Lereya, *Long-term Effects of Bullying*, 100 Arch. Dis. Child. 879, 879 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4552909/. The negative effects on academic achievement are reflected in drops in GPA and standardized test scores and increased rates of truancy, absenteeism, and drop-outs. *See Effects of Bullying*.

When children are bullied or harassed because of discriminatory animus aimed at their Muslim faith or Middle Eastern ancestry, children suffer more significantly than from generalized harassment, with worse mental health and substance abuse levels,

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[14] *Effects of Bullying* (stating that children who are bullied are more likely to experience depression, anxiety, increases in sadness and loneliness, and health complaints); Dieter Wolke and Suzet Tanya Lereya, *Long-term Effects of Bullying*, 100 Arch. Dis. Child. 879, 879 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4552909/ (children who were victims of bullying are at higher risk for anxiety disorder, depression, and thoughts of self-harm and suicide); Xiaoyan Zhang et al., *The Impact of School Social Support and Bullying Victimization on Psychological Distress among California Adolescents*, 14 Cal. J. Health Promot. 56, 56 (2016) (adolescents who are victims of bullying suffer from various psychological problems like anxiety and depression, are twice as likely to suffer from serious psychological distress compared to others, and are associated with a higher risk of suicide).

weaker academic performance, and higher rates of truancy. Stephen T. Russell et al., *Adolescent Health and Harassment Based on Discriminatory Bias*, 102 Am. J. Pub. Health, 493, 493 (2012). Arab-American youth who have experienced prejudice and discrimination feel less competent academically, have lower self-esteem,[15] and have higher rates of stress, depression, anxiety, and delinquency.[16] Specifically, "being called a terrorist, having a hijab pulled off and other acts of bullying can have a negative impact on students' academic performance, mental health and physical health." Rebecca A. Clay, *Islamophobia*, 48 Monitor on Psych. 34, 34 (2017), http://www.apa.org/monitor/2017/04/islamophobia.aspx. One educator interviewed for this brief stated that since the election, Muslim students, particularly female students, have become quiet and withdrawn in her classroom. Another educator expressed concern about the emotional development of her Muslim students, noting that students cannot fully develop their identities when they live in fear of stereotypes and what others may think of them based on their religion.

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[15] Rhonda Tabbah, Antoinette Halsell Miranda & Joe E. Wheaton, *Self-Concept in Arab American Adolescents: Implications of Social Support and Experiences in the Schools*, 49 Psych. in the Sch. 817, 817 (2012).

[16] Sawssan R. Ahmed, Maryam Kia-Keating & Katherine H. Tsai, *A Structural Model of Racial Discrimination, Acculturative Stress, and Cultural Resources Among Arab American Adolescents*, 48 Am. J. Cmty. Psych. 181, 186 (2011); Lama Z. Khouri, *On Belonging: The American Adolescent of Arab Descent*, 72 J. Clinical Psych.: In Session 818, 819 (2016).

c. Anti-Muslim bias degrades school climate, mental health, and academic achievement for all students.

Anti-Muslim bullying and harassment harms all students, not only those targeted. A student's personal development and academic achievement greatly depend on a positive school climate, consisting of interpersonal relationships among students, teachers, and administrators, all of which combine to set the norms, values, and expectations at school. *See* Amrit Thapa et al., *School Climate Research Summary*, Nat'l Sch. Climate Ctr. at 3-4 (2012), https://www.schoolclimate.org/climate/documents/policy/sc-brief-v3.pdf. The social, emotional, and physical safety of students make up critical elements of a positive school climate. *See id.* at 4. If the safety of one group of students is threatened by increased discrimination, all efforts to create a healthy school climate are compromised.[17] "In schools without supportive norms, structures, and relationships, students are more likely to experience violence, peer-victimization, and punitive disciplinary actions, often accompanied by high levels of absenteeism, and reduced academic achievement." Amrit Thapa

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[17] *See, e.g.*, Wanda Cassidy & Margaret Jackson, *The Need for Equality in Education: An Intersectionality Examination of Labeling and Zero Tolerance Practices*, 40 McGill J. Educ. 435, 438 (2005) ("children who experience discrimination on the basis of race, gender, class, disability, and/or sexual orientation may suffer from more than one form of discrimination. Those factors can be seen to intersect in ways which compound rather than simply add together in final impact. And, while the child may experience multiple levels of discrimination, multiple levels of protection may not be provided by the school.").

et al. at 4. Conversely, improving school climate is associated with decreased aggression and violence and increased academic achievement. *See* David Osher et al., *Improving Academic Achievement Through Improving School Climate and Student Connectedness* at 5-6 (2009) (finding that a positive change in school climate is related to significant gains in student scores on statewide achievement tests).

Witnesses to bullying also suffer. School climate is inextricably tied to bullying because such harassment inflicts severe physical and psychological harm on not only the victims of bullying, but also the students who witness aggressive behavior and the aggressors themselves. *See* Daniel J. Flannery et al., *Impact of Exposure to Violence in School on Child and Adolescent Mental Health and Behavior*, 32 J. Cmty. Psych. 559, 570 (2004) ("Where school violence is prevalent, . . . [t]he entire school suffers, not just perpetrators and victims."). "Observing victimization can negatively impact psychological functioning even in cases where students themselves have not been victimized." Ian Rivers et al., *Observing Bullying at School: The Mental Health Implications of Witness Status*, 24 Sch. Psych. Q. 211, 218 (2009). The elevated mental health risks for witnesses to bullying can be due to empathy for the victim, fear that they too may be victimized, or the cognitive dissonance resulting from their inaction despite a desire to intervene. *See id.* at 220.

The perpetrators of bullying may also suffer long-term effects, such as greater stress, aggression, and poorer health behaviors in adulthood. *See* Karen A.

Matthews et al., *Bullying and Being Bullied in Childhood Are Associated with Different Psychosocial Risk Factors for Poor Physical Health in Men*, 28 Psych. Sci. 808, 815 (2017). Young adults who were both bullies and victims (bully/victims) similarly show increased levels of anxiety and depressive disorders, antisocial personality disorder, and suicidality. *See* William E. Copeland et al., *Adult Psychiatric Outcomes of Bullying and Being Bullied by Peers in Childhood and Adolescence*, 70 JAMA Psych. 419, 424 (2013) ("These [negative mental health] effects were maintained even after accounting for pre-existing psychiatric problems or family hardships.").

When students feel depressed, anxious, angry, embarrassed, or scared as a result of bullying, they are less engaged and committed to schoolwork. *See* Amrit Thapa et al. at 4; *see also* Flannery, *supra*. "Students have reported academic problems and an inability to learn in school, and some students have even refused to go to school at all because of harassment and violence that occurs in the school setting." Flannery, *supra*. Academic achievement is dependent on students feeling safe at school, and students feel safer in environments where diversity is respected. *See* Jaana Juvonen et al., *Ethnic Diversity and Perceptions of Safety in Urban Middle Schools*, 17 Psych. Sci. 393, 398 (2006) (finding that student diversity is associated with feelings of safety and social satisfaction in school). Interviewed educators confirmed these findings, discussing the need for students to feel safe and valued at school and their own efforts to foster a healthy school climate to benefit all students.

In addition, the ability to freely engage in classroom discussion is impacted when certain groups of students feel unable to contribute. "[C]lassroom discussion is livelier, more spirited, and simply more enlightening and interesting when the students have the greatest possible variety of backgrounds." *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (internal quotations omitted) (holding that the educational benefits of diversity are a compelling government interest). One educator interviewed stated that Muslim students were reluctant this year to share with their classmates regarding their faith and traditions. In previous years, Muslim students would discuss events such as Ramadan or the Eid holiday in the classroom, but that no longer occurs. Another educator commented that since the election, her Muslim students are quieter and less likely to participate and observed that as a result, the entire classroom loses a valuable opportunity for students to learn from each other.

CONCLUSION

If the Court condones the President's stigmatization of Muslims by upholding the Executive Order, it will further damage school climates and increase the risk to the mental health and academic achievement of students across the country. A policy of banning all travelers from six Muslim-majority countries, a stance rooted in anti-Muslim animus, sends a strong message to Muslim and Middle Eastern students. They understand that such a policy means that they are not worthy of society's equal respect and that they are viewed as a source of violence and terrorism who ought to be feared by the larger community. The "necessary consequence" of such policies is to

demean and stigmatize these students. *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015). If this Court upholds this Executive Order, hundreds of thousands of children will throughout their lives "suffer the stigma of knowing" that in the eyes of the state, they are "somehow lesser." *See id.* at 2600.

This stigmatization not only negatively impacts Muslim students, but it creates a negative school climate and hostile learning environment for all students. *Amicus* NEA respectfully requests that the Court hold that Executive Order No. 13,780 violates the Constitution's Establishment Clause.

Respectfully submitted,

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